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Just war and the question of authority

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Abstract This article assesses the recently renewed interest in the just war criterion of sovereign authority from a Thomistic perspective. It contrasts the classical conceptualisation of authority as found in the work of St Thomas Aquinas with the argument made by today's revisionist just war thinkers. The article points out that the two approaches start from fundamentally different units of moral analysis. While the Thomistic just war emphasises the common good of the political community revisionists advocate the perspective of moral individualism. As a result, for Thomism, only those entrusted with the responsibility for the common good of the political community are entitled to wage war while, in contrast, revisionists argue that any individual has the right to wage war. The latter side's position, the article criticises, is problematic from a moral point of view as it runs counter to the just war tradition's concern about restraint in the employment of force.

Keywords Cosmopolitanism · Just War · Revisionist Just War · Sovereign Authority · Thomas Aquinas

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1 Introduction

Until very recently, just war thinkers of various schools more or less unanimously argued that the authority criterion of just war had been neglected in contemporary debate.¹ Writing in 2018, this claim can no longer be maintained. Rather, it seems that the authority criterion has moved to the forefront of debate as a host of publications on the question indicates (cf., e.g., Benbaji 2018; Fabre 2008, 2012; Finlay 2010; Kutz 2005; Parry 2015, 2017; Reitberger 2013; Schwenkenbecher 2013; Steinhoff 2007; Wrangé 2017). Interestingly, the revived interest in authority has returned philosophical attention to the principle classical just war thinkers such as St Thomas Aquinas considered to be the most important of all. However, despite the renewed interest in authority, most contemporary analytical philosophers working on the ethics of war come to a very different conclusion. While St Thomas considered sovereign authority to be a prerequisite of just war these thinkers argue that any individual can pass the authority test. This article contrasts the Thomistic and revisionist/cosmopolitan understandings of the authority criterion and argues that revisionists, by favouring the individual over the political community, advocate a just war which not only deviates from the earlier approach, but also risks opening the door to a much more violent world.² In terms of outline, the article starts off with a section that introduces the classical understanding of sovereign authority as most prominently encountered in the work of Aquinas. The article then turns to the revisionist argument with regard to the authority to wage war. Using the example of the work of Uwe Steinhoff and Cécile Fabre it will be pointed out how their individualistic morality constitutes a conceptualisation which markedly differs from the Thomistic understanding. Finally, the article critiques the individualistic turn in contemporary just war thinking for a morally problematic weakening of the restraining function of just war by granting the authority to wage war to any individual.

2 Thomistic sovereign authority

The following section provides an account of sovereign authority as found in the work of St Thomas. The “Angelic Doctor” (1948, II-II, q. 40, a. 1), in his classical statement of just war, provided the following definition:

I answer that, In order for a war to be just, three things are necessary. First, the authority of the sovereign by whose command the war is to be waged. For it is not the business of a private individual to declare war, because he can seek

¹ Within the ethics of war at least five terms have historically been employed to refer to the authority criterion which arguably caused confusion, namely legitimate authority, proper authority, right authority, competent authority, and sovereign authority (Reitberger 2013, p. 67). This article refers to the authority criterion by using Johnson’s term of “sovereign authority.”.

² Grouping together a diverse set of thinkers under the category of revisionists/cosmopolitans inevitably amounts to an act of simplification. For a nuanced discussion of the differences within revisionism see Lazar’s (2017a) review article. In what follows, the terms revisionists and cosmopolitans will be used interchangeably.

for redress of his rights from the tribunal of his superior. Moreover it is not the business of a private individual to summon together the people, which has to be done in wartime. And as the care of the common weal is committed to those who are in authority, it is their business to watch over the common weal of the city, kingdom or province subject to them. And just as it is lawful for them to have recourse to the sword in defending that common weal against internal disturbances, when they punish evil-doers, according to the words of the Apostle (Rm. 13:4): “He beareth not the sword in vain: for he is God’s minister, an avenger to execute wrath upon him that doth evil”; so too, it is their business to have recourse to the sword of war in defending the common weal against external enemies. Hence it is said to those who are in authority (Ps. 81:4): “Rescue the poor: and deliver the needy out of the hand of the sinner”; and for this reason Augustine says (*Contra Faust.* xxii, 75): “The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.”

Johnson (2013, pp. 19–20) argues that Aquinas’s definition must be seen before the horizon of the medieval understanding of the sovereign as being responsible for establishing the three “ends of good politics,” namely those of order, justice, and peace. Consequently, because only the sovereign was entitled to decide on the matters of just cause and right intention, sovereign authority was the primary criterion of just war, logically prior to the other criteria.³

St Thomas as systematiser of the classical just war benefited a great deal from the canonical debate which had taken place before his own days (cf., e. g., Russell 1975). His thought was also deeply influenced by the revived interest in natural law during his days which held that the political community came into being as the result of a prompting of human nature. In the same way that it was considered to be natural for human beings to bond for their common good it was assumed that a ruler had to be at the top of the community who held responsibility for the good of all. Crucially, due to his nature as “civic and social animal” (1948, I-II, q. 72, a. 4), the good citizen was considered to be the one who puts the interest of the common good above his private interests. In his treatise *De Regno ad regem Cypri* Aquinas (1949, I, ch. 1) explains why the good of the community trumps the good of the individual:

If, then, it is natural for man to live in the society of many, it is necessary that there exist among men some means by which the group may be governed. For where there are many men together and each one is looking after his own interest, the multitude would be broken up and scattered unless there were also an agency to take care of what appertains to the commonweal. In like manner, the body of a man or any other animal would disintegrate unless there were

³ It should be noted that Johnson’s interpretation relies on the fact that St Thomas, in his definition of just war quoted above, listed the authority criterion in first place. This position, however, has not been embraced unanimously. Reichberg (2017, pp. 115–116), for example, does not consider St Thomas to argue that the authority criterion constitutes “a formal precondition of just cause,” as Johnson does.

a general ruling force within the body which watches over the common good of all members. With this in mind, Solomon says [Eccl. 4:9]: “Where there is no governor, the people shall fall.”

Johnson (2013, p. 25) identifies two directions from which the lead role of the authority criterion resulted. The first was the argument that only sovereign temporal rulers had the right to use armed force. In consequence, neither the Church nor private individuals were justified in using such force. This rationale was a conscious attempt to rein in a worrisome proliferation of actors who claimed to have the right to use armed force and which had resulted in “widespread banditry and warlordism” (Johnson 2007, p. 7). The canonists, whose conclusions Aquinas succinctly summarised, had denied the Church the use of force in line with the idea of the two swords which, introduced by Pope Gelasius I in order distinguish between the ecclesiastical and temporal spheres, resulted in the argument that only the temporal power had the right to employ force. With regard to private individuals the argument was that they could appeal to their superiors in order to establish or re-establish a state of justice. Only the highest of superiors, the sovereign, had the right to resort to armed force because he alone had no temporal superior (Johnson 2013, p. 25). That is why St Thomas held that “Now in human society no man can exercise coercion except through public authority: and, consequently, if a private individual not having public authority takes another’s property by violence, he acts unlawfully and commits a robbery, as burglars do” (1948, II-II, q. 66, a. 8). It was the sovereign’s responsibility to maintain or work toward peace imagined as *tranquillitas ordinis*, or the tranquillity of order. Consequently, for Aquinas, the sovereign’s authority to use the sword was inseparably linked to his responsibility for the common good. In his own words (1948, II-II, q. 64, a. 3):

I answer that, As stated above [Article 2], it is lawful to kill an evildoer in so far as it is directed to the welfare of the whole community, so that it belongs to him alone who has charge of the community’s welfare. Thus it belongs to a physician to cut off a decayed limb, when he has been entrusted with the care of the health of the whole body. Now the care of the common good is entrusted to persons of rank having public authority: wherefore they alone, and not private individuals, can lawfully put evildoers to death.

Theologically, too, this take reiterated the distinction between public war and the illicit private use of force, of which the latter, according to St Augustine, was “inherently unjust because tinged with sinful self-love” (Johnson 2007, p. 5). At the same time, the limitation of the use of force to sovereign authority only took on a crucial role with regard to the moral distinctiveness of war: “it distinguished *bellum*, war, as an activity on behalf of the common good, from *duellum*, the duel, use of arms by individual knights and nobles without sovereign authority” (2007, p. 5). The result was “a first instance of a double bind between legitimate authority and the use of force in the context of medieval legal thought. In sum, a war was just by virtue of being waged by a prince, yet what made a prince a prince was his right to wage war” (Bartelson 2010, p. 90).

The second direction Johnson identifies was the reflection about “the moral responsibilities and personal characteristics of the ideal or ‘good’ ruler” (2013, p. 25). Medieval accounts such as Aquinas’s commonly referred to Romans 13:4 which defined authority, including the authority to use force, as having been bestowed upon the ruler by God.⁴ In addition, Romans 13:4 also had significance for the character formation of the good ruler because the ruler, as “minister” of God, had to acquire the necessary virtues.⁵ As Aquinas (1949, I, ch. 16) puts it succinctly:

For an individual man to lead a good life two things are required. The first and most important is to act in a virtuous manner (for virtue is that by which one lives well); the second, which is secondary and instrumental, is a sufficiency of those bodily goods whose use is necessary for virtuous life. Yet the unity of man is brought about by nature, while the unity of multitude, which we call peace, must be procured through the efforts of the ruler. Therefore, to establish virtuous living in a multitude three things are necessary. First of all, that the multitude be established in the unity of peace. Second, that the multitude thus united in the bond of peace, be directed to acting well. For just as a man can do nothing well unless unity within his members be presupposed, so a multitude of men lacking the unity of peace will be hindered from virtuous action by the fact that it is fighting against itself. In the third place, it is necessary that there be at hand a sufficient supply of the things required for proper living, procured by the ruler’s efforts.

In summation, given this foundation, Johnson (2014, p. 84) points out that the classical understanding of sovereignty as understood by thinkers like Aquinas was a top-down approach which followed from the responsibilities of the ruler who held responsibility for the common good. This understanding asked the sovereign to maintain and establish justice and peace. In other words, the ruler took on the function of a judge; a just war “has to do precisely with the execution of justice in response to injustice. This is the function of just war, *bellum iustum*” (Johnson 2013, p. 26). In St Thomas’s own words (1948, II-II, q. 66, a. 8): “As regards princes, the public power is entrusted to them that they may be the guardians of justice: hence it is unlawful for them to use violence or coercion, save within the bounds of justice—either by fighting against the enemy, or against the citizens, by punishing evil-doers: and whatever is taken by violence of this kind is not the spoils of robbery, since it is not contrary to justice.” In this regard, Bartelson (2010, p. 88) speaks of a medieval understanding of authority as law enforcement. The right to self-defence, in this understanding, was taken for granted. It was a self-evident truth of natural law. That is why in a seminal work Pope Innocent IV (2006, pp. 150–151) did not use the term for war when he referred to defensive uses of force: “It is permissible for

⁴ “For rulers are not a cause of fear to good conduct, but to evil. Do you wish to have no fear of authority? Then do what is good and you will receive approval from it, for it is a servant of God for your good. But if you do evil, be afraid, for it does not bear the sword without purpose; it is the servant of God to inflict wrath on the evildoer.”

⁵ There has been an increased interest in the Thomistic account of just war with regard to virtue ethics. Cf., e. g., Cole (1999), Gorman (2010), and McCarthy (2011).

anyone to wage war in self-defense or to protect property. Nor is this properly called ‘war’ (*bellum*) but rather ‘defense’ (*defensio*). [One] may lawfully fight back on the spot (*incontinenti*) (...) before he has turned his attention to other matters.” In other words, every person had a right to self-defence and it was considered to be the logical consequence that the political community also enjoyed that right. Extending beyond mere self-defence, for classical thinkers, the responsibility for the common good also included what today is considered to belong to the category of offensive force, namely the right to punish and the retaking of property which had been unjustly seized. Crucially, the common good came in two forms. First, there was the common good of the ruler’s own political community. However, there was also the common good of all humanity. In consequence, maintaining and establishing justice and peace could require the use of force both within and without one’s own territory. In contrast to the modern understanding, in the Middle Ages, there was no sovereignty in the sense that even in the face of grave violations of natural law a ruler had to fear no sanction because of the inviolability of his borders. While the sovereign temporal ruler was the only body to use the sword within the political community there was no such sovereignty between political communities. As Philpott (1995, pp. 356–357) puts it, in the Middle Ages “every ruler both endured limits within his own territory and enjoyed some claims over the internal prerogatives of other rulers within Christendom.” Within Christendom, there was “moral and legal unity. Although nobody was sovereign within this realm, natural law obligated all of the faithful, and everybody was tied to someone else by some sort of legal bond” (1995, p. 362).⁶ That is why St Thomas (1948, II-II, q. 40, a. 1), immediately following his reference to Rom 13:4, argues that “Hence it is said to those who are in authority (Ps. 81:4): ‘Rescue the poor: and deliver the needy out of the hand of the sinner’; and for this reason Augustine says (Contra Faust. xxii, 75): ‘The natural order conducive to peace among mortals demands that the power to declare and counsel war should be in the hands of those who hold the supreme authority.’”

3 The cosmopolitan/revisionist understanding of the authority criterion

Along with a generally increased interest in just war theory by analytical philosophers who have entered the arena over the last two decades the authority criterion has received renewed critical attention. These thinkers, relying on Rawls’s method of reflective equilibrium,

develop moral arguments by taking our considered judgments about the permissibility of actions in particular cases and trying to identify the underlying principles that unify them. We then take those principles and test how they apply to other cases, real or hypothetical. If the principles generate conclusions that conflict with our considered judgments those cases, then we must revise ei-

⁶ There should thus always be a moment of critical reflection before drawing parallels between medieval and modern-day warfare as the underlying differences in the conceptualisation of the state invite misinterpretation (Beestermöller 1990, 25).

ther the principles or our judgments. As our project evolves, and we revise our principles in light of our judgments and our judgments in light of our principles, we approach reflective equilibrium (the underlying standard of epistemic justification is coherentist). (Lazar 2017b, p. 114)

Revisionists have focused their critical attention on one particular interpretation of the just war, namely Michael Walzer's (2015) account, which itself parts with the Thomistic just war in several respects. For example, with regard to the authority criterion Walzer essentially advocates the so-called "Westphalian understanding" with its limitation of just cause to self-defence and its key principles of political sovereignty and territorial integrity.⁷ Having said that, however, like classical thinkers, Walzer holds that the political community has a special moral significance.⁸ Revisionists, in contrast, consider moral responsibility for killing in war to reside with individuals, not states. These philosophers intend to discredit the traditional way of thinking which they see as "a very state-based, collectivist approach to war" (Frowe 2014, p. 13). They take Walzer's just war theory as the reigning one which they seek to contradict and thereby develop a better theory (Braun 2018, p. 353). Unsurprisingly, they criticise Walzer and any theorist who allocates special moral value to the nation state and the political community from which it derives for their "romance of the nation-state" (Luban 1980). In contrast to Walzer, revisionists advocate "reductive individualism" which is reductivist due to its assumption that the rules which regulate killing in war are equivalent to those regulating interpersonal killing outside of war (Frowe 2014, p. 13). Reductivism holds that there is only one set of moral principles which applies all the time, rather than distinct principles for different moral domains such as war and peace. In other words, while traditional just war theorists begin with thinking about war, revisionists start by thinking "about the ethics of killing outside of war, then apply those principles to the case of war" (Lazar 2018, p. 35). As a result, due to the fact that in everyday life the use of force is considered to be justified in self-defence only revisionists argue that self-defence is the only just cause for war, too (cf., e. g., McMahan 2009). At the same time, revisionists are also individualists as they argue that moral theory must concentrate on individuals rather than collectives such as, for example, nation states (Frowe 2014, p. 13). As far as the authority criterion is concerned, revisionists generally reject the classical understanding and some revisionist theorists even go as far as to argue for discarding the criterion altogether. The next section investigates, based on the work of Steinhoff and Fabre, why the revisionist school of just war comes to a largely negative conclusion vis-à-vis the criterion of sovereign authority.

⁷ It is important to note at this point that the "Westphalian understanding" which Walzer refers to as the "legalist paradigm" and employs as starting point of moral analysis should not be conceived of as an understanding that was firmly established in 1648 and has continued to regulate state interaction until the present day. Far from it, the historical record calls for a considerable amount of caution when referring to the term "Westphalian System" as such a broad conceptualisation inevitably amounts to an act of simplification (cf., e. g., Duchhardt 1999, 2010; Glanville 2013; Lesaffer 2018; Stirk 2012).

⁸ It should be noted that by taking political communities as primary unity of analysis Walzer in actual fact has "much in common with classical Aristotelian approaches to the *jus ad bellum*, like that offered by Aquinas" (O'Driscoll 2009, p. 33).

4 Steinhoff's critique of classical authority

Steinhoff's account of authority and just war stands out among the work of revisionist thinkers as he explicitly develops his argument as a rebuttal of the classical conceptualisation. Most of his revisionist colleagues, as discussed above, concentrate on the Walzerian approach to just war which follows the logic of the "Westphalian System."⁹ As Steinhoff (2007, p. 2) states in the introduction of his book: "In the course of this enquiry I shall treat traditional just war theory, which goes back to the Catholic Church fathers Thomas Aquinas [sic] and Augustine and has been further developed by other thinkers. This theory will be discussed, yet by no means adopted; rather, some of its central points are rejected here." With regard to the criterion of "legitimate authority" in particular, Steinhoff (2007, p. 3) leaves little doubt about his opposition to the classical just war and the latter's granting of the right to war to public authority only. "(...) the view that such rights are attributable only to the state and its representatives, but not to the individual, is pre-Enlightenment and pre-modern, namely medieval, or modern in the bad sense of belonging to a metaphysics of the state and having certain totalitarian tendencies." Rejecting the classical understanding, Steinhoff (2007, p. 3) provides his take which, in a nutshell, summarises the cosmopolitan/revisionist argument on legitimate authority:

(...) I shall argue, contrary to the tradition of just war theory, that every single individual is a legitimate authority and has the right to declare war on others or to the state, provided only that the individual proceed responsibly in his or her decision processes, that is, that one proceed in circumspect and rational consideration of relevant information and moral aspects. This is merely a thorough-going application of a perspective which is enlightened, liberal and oriented to individual rights, a perspective which I am at pains to adopt throughout.

In essence, Steinhoff identifies the "anti-individualist and collectivist prejudice" (2007, p. 18) of medieval thought as the origin of the classical authority criterion which he so vehemently rejects:

The idea that a single individual has the right to defend his or her rights against those who do not respect them and, if necessary, may do so with violence and against the state, and, moreover, that he or she has the right to violently punish rights violators, even if they appear in the form of a right violating state, was alien in the Middle Ages – just as alien as the idea of individual rights. Medieval, too, is the considerable dose of metaphysics necessary for thinking that a community can have the right to punish, but that a single individual cannot have such a right. *Whence* can the community have such a right if it does not derive it from the individuals who come together to form the community? In contradistinction to the church fathers, the view of a *liberal* theorist such as John Locke is, in any case, that a community can only have the rights which its

⁹ In fairness to Walzer, this is not to argue that he considers the "legalist paradigm" as the be all and end all. In actual fact, he argues for certain "rules of disregard" (2015, p. 86). However, as I have demonstrated elsewhere (Braun 2018), Walzer starts his moral argument from that paradigm which, at times, lets him blur the line between moral and legal argument.

members transfer to it. There is no miraculous increase of rights by representation. (2007, pp. 18–19)

Having rebutted the classical argument that the political community trumps the individual in moral worth Steinhoff next turns against the pacification argument, namely the idea that only those invested with the responsibility for the common good of the community have the right to use force in order to prevent a situation in which anyone may employ force according to his or her liking:

For medieval thinkers ‘civilized living’ consisted perhaps not least in a situation in which authorities supposedly appointed by God told the subjects, at whose expense they were living, what to do and what not to do. That such thinkers should set the highest value on the principle of legitimate authority is perhaps due more to their own self-interest than to their care for the public. But, whatever the motivation of these anti-liberal thinkers might have been, the fact is that thinkers like Locke have a good answer to this conjuring up of an allegedly ‘very real threat of anarchy.’ (2007, p. 19)

That ostensible answer Steinhoff derives from John Locke who had argued along the lines that the individual right to use force against an unjust ruler need not lead to anarchy as the criterion of just cause still applies (2007, pp. 19–20). In sum, Steinhoff (2007, p. 20) provides a basic digest of the cosmopolitan/revisionist school’s take on the criterion which will be considered in more detail shortly. “Contrary to just war theory, individuals – or more or less unorganized groups, for that matter – do not need the mediation of a representative (as in Catholicism) in order to gain legitimate authority for waging war; rather, they bear this authority themselves. If, under certain conditions, a *right to war* comes into operation, it is, or is based upon, an *individual right*.”

5 The broader cosmopolitan/revisionist argument

Having provided an account of Steinhoff’s outright rejection of classical just war argument this section digs deeper into the philosophical underpinnings of his critique. The most concise formulation of a cosmopolitan/revisionist just war approach can arguably be found in Fabre’s (cf., 2008, 2012) work. Importantly, while Steinhoff mainly directed his critique at the classical understanding of authority Fabre, following Walzer’s lead, concentrates on the Westphalian conceptualisation. She (2008, p. 964) starts her argument by describing the status quo of the Westphalian understanding of “legitimate authority:” “(...) the requirement of legitimate authority confers the right to resort to war on states and coalitions of states – to wit, on sovereign political organizations with the power to enforce laws within a given territory.” She adds that as a consequence of decolonisation the right to war has also been granted to political movements engaged in wars of liberation against oppressive rulers. However, this in historical terms very recent development does not, according to Fabre, diminish the “central aims” (2008, p. 964) of the Westphalian authority criterion, namely to justify the use of force as a defence of states’ rights

to territorial integrity and political sovereignty. These “still rather statist overtones” (2008, p. 964), according to Fabre, have been challenged recently by a revival of the cosmopolitan tradition whose core precepts she defines as:

(a) individuals are the fundamental units of moral concern and ought to be regarded as one another’s moral equals; (b) whatever rights and privileges states have, they have them *only* in so far as they thereby serve individuals’ fundamental interests; (c) states are not under a greater obligation to respect their own individual members’ fundamental rights than to respect the fundamental rights of foreigners. According to cosmopolitans, individuals’ basic entitlements are independent of political borders, and states have authority to the extent that they respect and promote those entitlements. (2008, p. 964)

The overall goal of Fabre’s argument is to advocate the abandonment of the authority criterion based on cosmopolitan grounds (2008, p. 965). Interestingly, as Fabre is willing to acknowledge, her argument has “Lockean undertones” (2008, p. 965), undertones that already came across in Steinhoff’s work. Having said that, she emphasises that her argument also partly departs from Locke.

With Locke, I will argue (a) that a state is legitimate to the extent that it protects its members’ fundamental rights; (b) that a people may resort to war to overthrow an illegitimate state; (c) that individuals acting alone have the right to go to war against unlawful foreign belligerents. Unlike Locke, however, I do not claim that a state is legitimate if, and only if, it rests on the people’s consent. Nor do I restrict the conferral of the right to wage a (civil) war on a whole people, through a *levée en masse*. Finally, my arguments in support of my Lockean conclusions are drawn from the contemporary literature on cosmopolitanism (...) (2008, p. 965)

As part of her substantive argument, Fabre (2008, p. 968) questions the assumption of the Westphalian authority criterion that in order to wage war the agent must be a political community built around communal political ends, namely those of territorial integrity and political sovereignty. She rejects this assumption, claiming that non-political groups and individuals can have the right to wage war. Thus, she, inevitably, cannot accept the classical conceptualisation of sovereign authority as necessary pre-requisite for a functioning and peaceful political community to which Bartelson (2010, p. 82) refers to as “double bind:”

(...) the cumulative consequence of past efforts to justify war with reference to legitimate authority has been to create a *double bind* between conceptions of political authority on the one hand and the use of force on the other. Therefore, if we want to make some historical sense of the just war tradition, we ought to conceive of the relationship between legitimate authority and the use of force as a two-way street: not only does the justification of war require legitimate authority, but this authority has frequently been legitimized with reference to the violence and disorder that would ensue in its absence.

Cosmopolitans like Fabre oppose this two-way street argument. Fabre's basic justification for abandoning the established authority criterion is that communal goods such as territorial integrity and political sovereignty are only the accumulation of individual goods and, consequently, there is no moral value to communal values as such; they are only precious as an extension of the rights of individuals. Consequently, for cosmopolitans the right to war is less limited, going beyond the defence of accumulated individual rights as expressed in the communal rights of the Westphalian standard. The right to war thus also falls to those individuals who must defend their rights to a, in cosmopolitan terms, "minimally flourishing life" (2008, p. 969) as expressed in basic human rights. Simply put, "it is not necessary, for an entity to have the right to wage a war, that it be a legitimate authority" (2008, p. 969).

6 Collectivists, individualists, and sovereign authority – a Thomistic critique of revisionists

Given the striking difference vis-à-vis the Thomistic understanding, what should be made of the revisionist argument about the authority to wage war? The following section starts off by noting that classical thinkers, in contrast to most revisionists, accepted that they did not have the authority to decide on matters of justice and their role was thus limited to giving advice to those in authority. Next, it will be pointed out that the moral individualism of revisionists which underpins their rejection of the authority criterion is morally problematic from a Thomistic point of view as that criterion is crucial for the just war's objective of limiting the use of force.

To begin with, in some respects, the legacy of the Westphalian understanding of sovereignty continues to have an impact on most contemporary just war thinking, including the revisionist just war. Unlike St Thomas, who started from the authority criterion, contemporary just war thinkers, as a result of concentrating on Walzer's just war, overwhelmingly start from considerations of justice as expressed in the just cause criterion and its limitation of the justified use of armed force to self-defence. Thus, in this regard, as Williams (2013, p. 65) notes, the revisionist just war "deploys a generally conventional account of sovereign authority, indebted to a stereotypical Westphalian position." The problem resulting from this position, however, is that it remains unclear who is responsible for deciding on matters of justice. As Johnson (2013, p. 21) laments: "Who makes the decision regarding justice? That is left unclear; but perhaps it is the moralists, or perhaps it is public opinion, or perhaps it is the law itself and the lawyers who interpret it. In any case, the role of the political authority is secondary, reacting to whatever has been determined by the appropriate experts with regard to justice." Crucially, while Johnson detects the prototypical statement of the modern understanding of authority in recent statements made by the US Catholic bishops the revisionist just war camp has arguably been willing to go even further. While just war thinkers like the US bishops, according to Johnson (2013, p. 20), have relegated the authority criterion to second or third place revisionists seek to abandon it altogether. In a sense, this move is unsurprising given that most revisionists' sole interest is in finding what they consider to be the moral

truth and they seem to have no second thoughts about whether they actually have the authority to decide whose conduct is just or unjust. However, such an understanding seems irreconcilable with the more limited and humble understanding of the role of the moralist in classical just war thinking: “Within this frame specialists in moral thinking, along with specialists working from other perspectives, may (and should) offer advice, but final judgment rests with the sovereign, because the responsibility for the good of the community rests on him (or her or, in rare cases, them)” (Johnson 2013, p. 24).

Upon reflection, it seems that the revisionist call to abandon the authority criterion is the direct consequence of their moral starting point. Rather than being the result of flawed reasoning by collectivist thinkers, as Steinhoff seems to suggest, the differences between the Thomistic and revisionist take on authority resonate from distinct philosophical points of departure; the main difference lies in their use of different units of analysis. While the Thomistic just war bestows special value on the political community it is the individual, for revisionists, who functions as the entry point of moral debate. “So what?,” one might ask, assuming that nothing is wrong about having different points of departure. However, as will be pointed out shortly, judged from a Thomistic perspective the revisionist/cosmopolitan outlook not only turns a core assumption of Thomism on its head, but also leads to morally questionable conclusions. Importantly, arguing against the revisionist understanding of the authority criterion does by no means deny the legitimacy of any change to the received just war criteria. Rather, for a historical approach to just war “The point is that cultivating a sense of the past need not enslave us to it. Rather, the hope must be that it will bestow upon us a deeper, more variegated perspective on the challenges we face today” (Brunstetter and O’Driscoll 2018, p. 2). St Thomas himself, for example, drew his conclusions about whether any war could be just through dialectically linking his own position to the particular opinions of his predecessors (Reichberg 2018, p. 60). Likewise, criticising the revisionist understanding of sovereignty from a Thomistic angle does not mean that there can be no common ground between the two approaches. For example, when revisionists object to Walzer’s arguments for a logical separation between *jus ad bellum* and *jus in bello* or his defence of a “moral equality of combatants” revisionists arrive at essentially the same conclusions Aquinas had made many centuries earlier (cf., e.g., Braun 2018).

However, seen from a Thomistic perspective, the main problem with the particular “renegotiation” revisionists advocate with regard to authority is that the just war ceases to be a way of thinking that only makes sense in connection with political efforts aimed at securing the common good.¹⁰ As illustrated above, for Aquinas, the just war was an ethics which emphasised the good of the community over that of the individual. In contrast, thinkers like Steinhoff and Fabre seek to break with this conceptualisation, putting the interest of the individual first which, then, requires discarding the inherited criterion of sovereign authority. For the Thomistic approach to just war such reasoning is problematic as it not only, to use Johnson’s (1979) term, does no longer keep “faith” with Aquinas’s succinct summary of classical just

¹⁰ The term “renegotiation” is borrowed from O’Driscoll (2008).

war thinking, but also disregards the wisdom past thinkers like Aquinas acquired by learning from the circumstances of their time. In particular, the revisionist rejection of the authority criterion runs counter to the key element of the tradition, namely its “dual theme” (Johnson 1984, p. 2) of permission and restraint, and risks giving legitimacy to a morally worrisome expansion in the use of force. Historically speaking, the just war has been an ethics which affirms that, although always regrettable, it can be morally justifiable to use force. This affirmation, however, comes with the requirement to limit that force as much as reasonably possible. As pointed out above, one of the main reasons for the medieval imposition of the sovereign authority criterion was to rein in a multitude of actors who all claimed to have the authority to wage war.

Given the contemporary spread of non-state actors such as Islamist terrorists who claim to have the authority to wage war one cannot fail to notice a curious parallel between medieval times and today. From a Thomistic perspective, granting any individual the authority to wage war seems like a reopening of Pandora’s Box in the sense that, once again, individuals would be capable to claim what Coates (2016, p. 156) has called “*self-authorization*,” the very action that led the canonists to argue for limiting the authority to wage war to sovereign authorities only. While revisionists, following Locke’s argument, will probably respond that for a war to be just the remaining just war criteria would still have to be met, for the Thomistic just war, beyond the obvious disagreement about the right unit of analysis, such an argument would be imprudent, too. After all, making a decision about the justice of one’s cause is a decision that is subject to human reason and might well be mistaken. For example, most observers would probably agree that Osama bin Laden did not have just cause to attack the US on 9/11. However, from what we know bin Laden very much believed that he was justified in ordering the assault. Seen from a Thomistic perspective, there is no way that bin Laden, as an individual, could have waged war because he lacked sovereign authority. In other words, it is moot from a Thomistic point of view to even consider the question whether bin Laden could have had just cause for war. The authority criterion thus functions as a means of restraint which rules out private uses of force and abandoning it is likely to lead to an increase in overall violence. Given that asymmetric warfare has arguably been the dominant type of contemporary conflict, the Thomistic just war has an important contribution to make in denying the legitimacy of those fighting as a non-authority from the start.

Having made this argument, it goes without saying that Thomism does not at all deny that individuals can be right when objecting to a sovereign authority’s unjust actions. While St Thomas certainly had a strong belief in the virtuousness of the just ruler and his responsibility for the common good of the community entrusted to him he also accepted that a tyrant might have to be removed from the outside by neighbouring princes, or even from the inside by a just resistance. How far St Thomas was willing to go in granting a right of resistance has been subject to considerable debate as his position varies according to which of his works is consulted. That he allowed for resistance as response to a ruler’s blatant disrespect of the responsibilities which have been bestowed on him, however, is uncontroversial (cf., e.g., Blythe 1986; Crofts 1973; Reichberg 2017, pp. 122–127). In sum, from

a Thomistic point of view, the authority criterion is not only a direct result of its collectivist approach, but also takes on a crucial function in restraining the use of force. Consequently, arguing for any individual to have the right to wage war seems like a very imprudent thing to do.

7 Conclusion

This article has investigated the authority criterion of just war which has recently been attracting renewed scholarly interest. The article contrasted two particular approaches to just war with regard to authority, namely the Thomistic and revisionist readings. It was pointed out that the Thomistic just war considers war as a collective undertaking only to be carried out with the authorisation of those in authority while revisionists, as a result of their moral individualism, are willing to grant the authority to wage war to any individual. Critically appreciating the revisionist approach to the authority criterion from a Thomistic point of view the article concluded that, besides the fundamental disagreement about the moral value of the political community, revisionists risk legitimising a morally problematic overall expansion in the use of force by abandoning the restraining mechanism of sovereign authority.

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References

- Aquinas, Thomas. 1948. *Summa Theologica*. Trans. Fathers of the English Dominican Province. Allen, TX: Christian Classics.
- Aquinas, Thomas. 1949. *De regno ad regem Cypri. On Kingship to the King of Cyprus*. Trans. Gerald B. Phelan and I. Th. Eschmann. Toronto: The Pontifical Institute of Mediaeval Studies.
- Bartelson, Jens. 2010. Double binds: sovereignty and the just war tradition. In *Sovereignty in Fragments. The Past, Present and Future of a Contested Concept*. Eds. Hent Kalmo and Quentin Skinner. Cambridge: Cambridge University Press, 81–95.
- Beestermöller, Gerhard. 1990. *Thomas von Aquin und der gerechte Krieg*. Köln: J.P. Bachem.
- Benbaji, Yitzhak. 2018. Legitimate authority in war. In *The Oxford Handbook of Ethics of War*. Eds. Seth Lazar and Helen Frowe. Oxford: Oxford University Press, 294–314.
- Blythe, James M. 1986. The mixed constitution and the distinction between regal and political power in the work of Thomas Aquinas. *Journal of the History of Ideas* 47 (4), 547–565.
- Braun, Christian Nikolaus. 2018. The historical approach and ‘the war of ethics within the ethics of war.’ *Journal of International Political Theory* 14 (3), 349–366.
- Brunstetter, Daniel R. & O’Driscoll, Cian. 2018. Introduction: an intimation of possibilities. In *Just War Thinkers: From Cicero to the 21st Century*. Eds. Daniel R. Brunstetter and Cian O’Driscoll. Abingdon: Routledge, 1–7.
- Coates, A. J. 2016. *The Ethics of War*. Manchester: Manchester University Press.
- Cole, Darrell. 1999. Thomas Aquinas on virtuous warfare. *The Journal of Religious Ethics* 27 (1), 57–80.
- Crofts, Richard A. 1973. The common good in the political theory of Thomas Aquinas. *The Thomist* 37 (1), 155–173.
- Duchhardt, Heinz. 1999. ‘Westphalian System.’ Zur Problematik einer Denkfigur. *Historische Zeitschrift* 269 (2), 305–315.

- Duchhardt, Heinz. 2010. Das 'Westfälische System:' Realität und Mythos. In *Akteure der Außenbeziehungen. Netzwerke und Interkulturalität im historischen Wandel*. Eds. Hillard von Thiesen and Christian Windler. Köln: Böhlau, 393–401.
- Fabre, Cecile. 2008. Cosmopolitanism, just war theory and legitimate authority. *International Affairs* 84 (5), 963–976.
- Fabre, Cecile. 2012. *Cosmopolitan War*. Oxford: Oxford University Press.
- Finlay, Christopher J. 2010. Legitimacy and non-state political violence. *The Journal of Political Philosophy* 18 (3), 287–312.
- Frowe, Helen. 2014. *Defensive Killing*. Oxford: Oxford University Press.
- Glanville, Luke. 2013. The myth of "traditional" sovereignty. *International Studies Quarterly* 57 (1), 79–90.
- Gorman, Ryan R. 2010. War and the virtues in Aquinas's ethical thought. *Journal of Military Ethics* 9 (3), 245–261.
- Innocent IV. 2006. Innocent IV (ca. 1180–1254): the kinds of violence and the limits of holy war. In *The Ethics of War: Classic and Contemporary Readings*. Eds. Gregory M. Reichberg, Henrik Syse and Endre Begby. Oxford: Blackwell Publishing, 148–155.
- Johnson, James Turner. 1979. On keeping faith: the use of history for religious ethics. *The Journal of Religious Ethics* 7 (1), 98–116.
- Johnson, James Turner. 1984. *Can Modern War Be Just?* New Haven: Yale University Press.
- Johnson, James Turner. 2007. Thinking morally about war in the middle ages and today. In *Ethics, Nationalism, and Just War: Medieval and Contemporary Perspectives*. Eds. Henrik Syse and Gregory M. Reichberg. Washington, DC: The Catholic University of America Press, 5–10.
- Johnson, James Turner. 2013. The right to use armed force: sovereignty, responsibility, and the common good. In *Just War: Authority, Tradition, and Practice*. Eds. Anthony F. Lang, Cian O'Driscoll and John Williams. Washington, DC: Georgetown University Press, 19–34.
- Johnson, James Turner. 2014. *Sovereignty: Moral and Historical Perspectives*. Washington, DC: Georgetown University Press.
- Kutz, Christopher. 2005. The difference uniforms make: collective violence in criminal law and war. *Philosophy & Public Affairs* 33 (2), 148–180.
- Lazar, Seth. 2017a. Just war theory: revisionists versus traditionalists. *Annual Review of Political Science* 20, 37–54.
- Lazar, Seth. 2017b. Evaluating the revisionist critique of just war theory. *Daedalus* 146 (1), 113–124.
- Lazar, Seth. 2018. Method in the morality of war. In *The Oxford Handbook of Ethics of War*. Eds. Seth Lazar and Helen Frowe. Oxford: Oxford University Press, 21–40.
- Lesaffer, Randall. 2018. The non-Westphalian peace. *Oxford Public International Law*. Accessed October 23, 2018. <http://opil.ouplaw.com/page/non-westphalian-peace/the-nonwestphalian-peace>.
- Luban, David. 1980. The romance of the nation-state. *Philosophy & Public Affairs* 9 (4), 392–397.
- McCarthy, Eli S. 2011. The virtue ethic difference in the just war discourse of James Turner Johnson and Catholic social teaching. *Political Theology* 12 (2), 275–304.
- McMahan, Jeff. 2009. *Killing in War*. Oxford: Oxford University Press.
- O'Driscoll, Cian. 2008. *The Renegotiation of the Just War Tradition and the Right to War in the Twenty-First Century*. New York: Palgrave Macmillan.
- O'Driscoll, Cian. 2009. From Versailles to 9/11: non-state actors and just war in the twentieth century. In *Ethics, Authority, and War: Non-State Actors and the Just War Tradition*. Eds. Eric A. Heinze and Brent J. Steele. New York: Palgrave Macmillan, 21–46.
- Parry, Jonathan. 2015. Just war theory, legitimate authority, and irregular belligerency. *Philosophia* 43 (1), 175–196.
- Parry, Jonathan. 2017. Legitimate authority and the ethics of war: a map of the terrain. *Ethics & International Affairs* 31 (2), 169–189.
- Philpott, Daniel. 1995. Sovereignty: an introduction and brief history. *Journal of International Affairs* 48 (2), 353–368.
- Reichberg, Gregory M. 2017. *Thomas Aquinas on War and Peace*. Cambridge: Cambridge University Press.
- Reichberg, Gregory M. 2018. Historiography of just war theory. In *The Oxford Handbook of Ethics of War*. Eds. Seth Lazar and Helen Frowe. Oxford: Oxford University Press, 59–79.
- Reitberger, Magnus. 2013. License to kill: is legitimate authority a requirement for just war? *International Theory* 5 (1), 64–93.
- Russell, Frederick H. 1975. *The Just War in the Middle Ages*. Cambridge: Cambridge University Press.

- Schwenkenbecher, Anne. 2013. Rethinking legitimate authority. In *Routledge Handbook of Ethics and War: Just War Theory in the 21st century*. Eds. Fritz Allhoff, Nicholas G. Evans and Adam Henschke. New York: Routledge, 161–170.
- Steinhoff, Uwe. 2007. *On the Ethics of War and Terrorism*. Oxford: Oxford University Press.
- Stirk, Peter M. R. 2012. The Westphalian model and sovereign equality. *Review of International Studies* 38 (3), 641–660.
- Walzer, Michael. 2015. *Just and Unjust Wars: A Moral Argument with Historical Illustrations*. New York: Basic Books.
- Williams, John. 2013. “Not in my name”? legitimate authority and liberal just war theory. In *Just War: Authority, Tradition, and Practice*. Eds. Anthony F. Lang, Cian O’Driscoll and John Williams. Washington, DC: Georgetown University Press, 63–80.
- Wrange, Pal. 2017. Does who matter? Legal authority and the use of military violence. *Ethics & International Affairs* 31 (2), 191–212.